

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA  
DAVENPORT DIVISION

UNITED STATES OF AMERICA, )  
)  
Plaintiff, )  
) ORIGINAL  
-vs- ) CRIMINAL NO. 3:08-cr-57  
)  
ANGELO LAVELL SCOTT, ) TRANSCRIPT  
) OF PROCEEDINGS  
Defendant. ) SENTENCING HEARING  
)

TRANSCRIPT OF PROCEEDINGS, held before the Honorable John  
Jarvey, at the Federal Courthouse, Davenport, Iowa, commencing  
at 2:32 p.m., June 25, 2009, reported by Linda Faurote-Egbers,  
Certified Shorthand Reporter and Notary Public for the State of  
Iowa.

APPEARANCES

Plaintiff by: MELISA K. ZAEHRINGER  
Assistant United States  
Attorney  
131 East Fourth Street  
Davenport, IA 52801

Defendant by: DAVID E. MULLIN  
Attorney at Law  
1636 42nd Street, N.E.  
Cedar Rapids, IA 52402

Reported by:  
Linda Faurote-Egbers  
Certified Shorthand Reporter

1	<u>INDEX</u>			
2	<u>Witness</u>	<u>Attorney</u>	<u>Page</u>	
3	Katie Tady	Ms. Zaehringer	7	
		Mr. Mullin	14	
4		Ms. Zaehringer	16	
		Mr. Mullin	17	
5		Ms. Zaehringer	18	
6	Mary DeVine	Mr. Zaehringer	19	
		Mr. Mullin	22	
7				
	Karl Hein	Ms. Zaehringer	25	
8		Mr. Mullin	28	
9				
10	<u>Government's Exhibits</u>		<u>Offered</u>	<u>Recieved</u>
11	1 - Conviction RE Paragraph 41		8	9
	2 - Conviction RE Paragraph 42		8	9
12	3 - Conviction RE Paragraph 43		8	9
	4 - US Marshals Booking Information		27	27
13	5 - Fingerprint Records		11	11
	6 - Fingerprint Records RE 1-15-99		12	12
14	7 - Fingerprint Records RE 6-08		12	13
	8 - Fingerprint Report		21	21
15	9 - Resume of Mary DeVine		21	21
	10 - Fingerprint Records		9	10
16				
17				
18				
19				
20	Certificate of Shorthand Reporter		52	
21				
22				
23				
24				
25				

1           THE COURT: Please be seated. The record can reflect  
2 that we are here in the matter of the United States of America  
3 versus Angelo Scott, it is Criminal Case 08-cr-57. Mr. Scott is  
4 before this Court for sentencing, having been found guilty on  
5 February 4, 2009, of a conspiracy to distribute over 50 grams of  
6 crack cocaine. He is present and represented by David Mullin.  
7 The government is represented by Melisa Zaehringer.

8           I have received and reviewed the Presentence Report in  
9 preparation for sentencing. I have also received the  
10 defendant's Sentencing Memorandum. I have also today received a  
11 number of exhibits, ten of them, I guess to be offered by the  
12 government in the course of this sentencing.

13           The government alleges that Mr. Scott has been  
14 convicted of two prior felony drug offenses. The defendant  
15 contends that he has not been convicted and so I think the  
16 appropriate place to begin this hearing is to resolve the  
17 factual dispute as to whether this defendant has been convicted  
18 of one or more felony drug offenses. Mr. Mullin?

19           MR. MULLIN: Thank you, Your Honor. There was also  
20 the question of the Motion to Discharge Counsel filed on May 14,  
21 2009, that's at docket record 112. We have not had a ruling on  
22 the Motion, the pro se Motion that he filed.

23           THE COURT: What is the reason for that?

24           MR. MULLIN: It was filed by him so I would have to  
25 have him answer the Court's question on that, Judge.

1 THE COURT: Mr. Scott, why do you want to replace Mr.  
2 Mullin?

3 THE DEFENDANT: On May 14th I filed a Motion to  
4 Discharge Mr. Mullin as counsel because I have received  
5 information from Mr. Mullin that he wasn't going to investigate  
6 the post trial Motions. He planned to do the post trial Motions  
7 and he told me that he would do the Motions, but he never went  
8 forth with it. He just said he was going to go off the  
9 government and what they allege and that they were going to have  
10 the burden of proving it to me at sentencing.

11 I have several witnesses I wanted to come forth,  
12 several witnesses I want to present for the purpose of  
13 sentencing, but Mr. Mullin decided that he didn't want to go  
14 forth with it and I had no say in whatsoever in how the  
15 Sentencing Memorandum was filed or the objections. I just was  
16 able to object and talk to Mr. Mullin by phone and he filed  
17 everything without my approval.

18 THE COURT: What witnesses did you want to call for  
19 what purpose?

20 THE DEFENDANT: For the purpose of the alleged prior  
21 convictions from Chicago, Illinois.

22 THE COURT: Who did you want to call and what would  
23 they say if called?

24 THE DEFENDANT: The probation office as well as it was  
25 listed on -- it was listed in the paper work of my Presentence

1 Investigation Report as to the dates, 2-28-97 I believe was the  
2 date that I was alleged to have been convicted and charged with  
3 possession with controlled substance.

4 THE COURT: Who in the probation office in Chicago did  
5 you want to call as a witness?

6 THE DEFENDANT: That's why I filed the Motion. Mr.  
7 Mullin, we had -- by the Court we approved -- you approved to  
8 have us -- funds given to us to have an investigation, a private  
9 investigator to investigate the case when we was doing  
10 investigation for pretrial. He let me know that he still had  
11 the investigator on standby for any purpose of investigation  
12 therefore after proposed Motion purposes as well.

13 Well, I asked him to go forth and investigate it, he  
14 told me himself that he would go to Chicago if the government  
15 did not provide the fingerprint analysis to the Court, and  
16 therefore right now today the government only has one  
17 fingerprint record of one case and they alleging that because  
18 the case was ran concurrent, that the second case is, in fact,  
19 me.

20 THE COURT: What objections did you want him to file  
21 to the Presentence Report that weren't filed?

22 THE DEFENDANT: I wrote him a letter and gave him the  
23 letter and told him exactly what Motions -- what Motions I  
24 wanted and what objections I wanted to be filed and none of them  
25 were incorporated into the Presentence Report that's done right

1 now.

2 THE COURT: Can you identify any of those for us  
3 today?

4 THE DEFENDANT: As -- as far as I know, the prior  
5 convictions was the main purpose of me wanting to discharge Mr.  
6 Mullin because he didn't handle that correctly, the prior  
7 convictions.

8 THE COURT: And what was it about his representation  
9 that you believe was handled incorrectly?

10 THE DEFENDANT: Because he promised me hisself that he  
11 would go directly to Chicago, Illinois, and go and review the  
12 records and review the files. Everything that has been  
13 presented has been presented by the government. Nothing on our  
14 part has been -- nothing has been on our part to present any  
15 type of defense in any way that would be in my favor. Nothing  
16 in my favor has been presented. Everything that is on the  
17 burden of the government and just going to let them do it.

18 Well, it sounds crazy to me honestly because he told  
19 me personally in a phone conversation and every time we have a  
20 phone conversation, he just totally -- doesn't go forth with the  
21 call. He doesn't go forth with what we were talking about. He  
22 wants everything to be on paper and he writes me back to say  
23 whatever he wants to say in the letter I guess for purposes to  
24 cover himself, but we have the client-attorney privilege right  
25 and so we don't have the purposes of recording conversations or

1 that I know of that the conversations are recorded to say this  
2 is my evidence to say the conversation was taking place between  
3 me and Mr. Mullin. I can't present that to the Court because  
4 that's between me and Mr. Mullin and that's a client-attorney  
5 privilege so that's my evidence, the conversation that we had  
6 amongst us.

7 THE COURT: The Motion for Substitution of Counsel is  
8 denied. Ms. Zaehringer, are you prepared to go forward with  
9 evidence today?

10 MS. ZAEHRINGER: Yes, Your Honor.

11 THE COURT: Go ahead.

12 MS. ZAEHRINGER Your Honor, the government would call  
13 Katie Tady.

14 KATIE TADY,  
15 witness herein, called as a witness by the government, after  
16 having been first duly sworn, was examined and testified as  
17 follows:

18 THE COURT: Go ahead.

19 EXAMINATION

20 BY MS. ZAEHRINGER:

21 Q. Can you state your name for the record and spell your  
22 last name?

23 A. Katie Tady, T-a-d-y.

24 Q. Where are you employed?

25 A. U.S. Probation.

1 Q. How long have you been employed there?

2 A. Since February 2008.

3 Q. And what job duties do you have?

4 A. I am assigned to the presentence unit.

5 Q. Did you write a Presentence Report for this defendant,  
6 Angelo Lavell Scott?

7 A. Yes.

8 Q. During your investigation of the case did you get  
9 certified convictions corresponding with Paragraphs 41, 42, and  
10 43?

11 A. Yes.

12 Q. In looking at Government's Exhibit 1 do you recognize  
13 that?

14 A. Yes.

15 Q. What do you recognize that to be?

16 A. It's a certified court document for the conviction  
17 listed 41 in the Presentence Report.

18 Q. And Government's Exhibit 2?

19 A. It's the certified court documents for the conviction  
20 listed in 42 of the Presentence Investigation.

21 Q. And Government's Exhibit 3?

22 A. It's conviction number 43, the certified court  
23 documents for that.

24 MS. ZAEHRINGER: Move to admit Government's Exhibits  
25 1, 2, and 3.



1 MR. MULLIN: No objection.

2 THE COURT: They are received.

3 MR. MULLIN: No objection, Your Honor.

4 THE COURT: They are received.

5 BY MS. ZAEHRINGER:

6 Q. During the investigation did you write a letter  
7 indicating you would like the fingerprint cards to the  
8 convictions out of Cook County?

9 A. I contacted the Chicago Police Department and obtained  
10 the fingerprint records for the conviction -- one of the  
11 convictions that was objected to by the defendant.

12 Q. Looking at Government's Exhibit 10, do you recognize  
13 that?

14 A. Yes.

15 Q. What do you recognize that to be?

16 A. It is a letter I received back from the Chicago Police  
17 Department letting me know of the defendant's fingerprint  
18 records and more specifically the one listed in Paragraph 41 of  
19 the Presentence Report.

20 Q. The ones that were sent back to you include the one he  
21 objected to as well as the other fingerprints that he did not  
22 object to?

23 A. Correct.

24 MS. ZAEHRINGER: Move to admit Government's Exhibit  
25 10.

1 MR. MULLIN: Your Honor, we object under Rule 803,  
2 foundation as to the content of those letters. She can  
3 certainly testify as to what she did, but now she is -- the  
4 government is trying to use a document purportedly from Chicago  
5 police when there are no -- no foundation has been laid as to  
6 that document. It is not self-authenticated, it is not  
7 certified, and we don't think that it comports with foundation  
8 requirements and therefore hearsay under Rule 803.

9 THE COURT: Thank you. The objection is overruled.  
10 Ten is received. Hearsay evidence that is determined by the  
11 Court to be reliable may be received at sentencing. This is a  
12 reliable exhibit and it has circumstantial evidence and it does  
13 relate to the convictions set forth in Government's Exhibit 1.  
14 BY MS. ZAEHRINGER:

15 Q. After obtaining the fingerprints from Cook County, did  
16 you take those along with other fingerprint cards over to a  
17 latent print examiner?

18 A. Yes.

19 Q. Looking at Government's Exhibit 5, can you tell us  
20 what that document is?

21 A. This document is the fingerprints that I received for  
22 conviction 41 and I took them to Mary DeVine at Rock Island  
23 Police Department and had her compare those fingerprints to his  
24 current fingerprints that were in the Joint I-Mate Booking  
25 System.

1 Q. Government's Exhibit 5, was that taken out of  
2 Government's Exhibit 10?

3 A. Yes.

4 MS. ZAEHRINGER: Move to admit Government's Exhibit 5.

5 MR. MULLIN: Same objection, Your Honor.

6 THE COURT: Received. Overruled.

7 BY MS. ZAEHRINGER:

8 Q. Government's Exhibit 6, can you explain that document?

9 A. Those are his fingerprint records from his arrest on  
10 January 15, 1999.

11 Q. And what was that arrest for?

12 A. Possessing cannabis.

13 Q. Out of what county?

14 A. Cook County.

15 Q. And what relevance do these fingerprints have in  
16 reference to the defendant's objections?

17 A. Well, in Paragraphs 41, 42, and 43, which the  
18 defendant objected to, a warrant was issued on I believe August  
19 27th for his arrest. He was arrested on January 15, 1999, for a  
20 separate charge, however, the probation officer assisting in the  
21 Northern District of Illinois thought that he was also arrested  
22 on that date for the three convictions --

23 MR. MULLIN: Objection, Your Honor. She is now  
24 testifying as to what some non-existent witness thinks the  
25 records say. If we could have a continuing objection to any

1 testimony about Exhibits 5 and 10 due to lack of foundation.

2 THE COURT: You can have that continuing objection.

3 Your objection is overruled.

4 BY MS. ZAEHRINGER:

5 Q. Can you continue?

6 A. Yes. He thought that the defendant was arrested on  
7 January 15, 1999, for possessing cannabis as well as outstanding  
8 warrants in convictions 41, 42, and 43.

9 MS. ZAEHRINGER: Move to admit Government's Exhibit 6.

10 MR. MULLIN: Same objection, Your Honor.

11 THE COURT: Received.

12 BY MS. ZAEHRINGER:

13 Q. Can you tell us what Government's Exhibit 7 is?

14 A. Yes, that is his fingerprints taken in I believe June  
15 of '08 when he was arrested for this offense.

16 Q. Do you know who those fingerprints were taken by?

17 A. I believe they were taken by Karl Hein.

18 MS. ZAEHRINGER: Move to admit Government's Exhibit 7.

19 MR. MULLIN: One moment, Judge. I don't believe I  
20 have Exhibit 7.

21 MS. ZAEHRINGER: It should be attached to Government's  
22 Exhibit 5.

23 MR. MULLIN: Just for clarification, these are from  
24 Cook County?

25 THE WITNESS: No, those are taken through the Joint

1 I-Mate Booking System.

2 BY MS. ZAEHRINGER:

3 Q. Who were the fingerprints taken by?

4 A. By Karl Hein in the U.S. Marshals Service.

5 MR. MULLIN: No objection, Your Honor.

6 THE COURT: Seven is received.

7 BY MS. ZAEHRINGER:

8 Q. Looking at 5 through 7, what did you do once you  
9 obtained these three finger cards?

10 A. I took them over to Mary DeVine at Rock Island Police  
11 Department and she analyzed them.

12 Q. After she analyzed them did you get them back from  
13 her?

14 A. Yes.

15 Q. What notations, if any, did she make on Government's  
16 Exhibits 5 through 7?

17 A. She signed and dated each one.

18 Q. Upon receiving these fingerprint cards back from Mary  
19 DeVine did she also give you a report as far as her  
20 evaluation?

21 A. Yes.

22 Q. In evaluating the journal entries or the convictions  
23 in Government's Exhibits 1, 2, and 3, do those -- are those  
24 accurately reflected in the Presentence Report?

25 A. I believe so.

1 MS. ZAEHRINGER: I have no further questions.

2 THE COURT: Mr. Mullin?

3 MR. MULLIN: Thank you.

4 EXAMINATION

5 BY MR. MULLIN:

6 Q. Looking at Exhibit 10, do you have that in front of  
7 you?

8 A. Yes.

9 Q. It is purportedly signed by a Jesse McMullen. Do you  
10 see that?

11 A. Yes.

12 Q. Do you know Mr. McMullen?

13 A. No.

14 Q. Do you recognize his signature?

15 A. No.

16 Q. So I understand, in Paragraph 41 of the Presentence  
17 Report, that's a conviction from April 24th of 1998, correct?

18 A. Yes.

19 Q. And you attempted to obtain from the Cook County Clerk  
20 of Court fingerprint evidence for that file, correct?

21 A. No, I obtained fingerprint records from the Chicago  
22 Police Department.

23 Q. My understanding is that you attempted to get them  
24 from Cook County, am I correct, or right?

25 A. I originally tried to get them from Cook County Jail,

1 not the Court.

2 Q. Cook County Jail. Thank you. And you were not  
3 successful in obtaining those from Cook County Jail?

4 A. Correct.

5 Q. And then you went to --

6 A. The Chicago Police Department.

7 Q. The Chicago Police Department and you say that someone  
8 sent you fingerprint evidence related to the conviction in  
9 Paragraph 41 of the Presentence Report?

10 A. Correct.

11 Q. And you attempted to do the same for the conviction at  
12 Paragraph 43 of the Presentence Report?

13 A. Correct.

14 Q. But you were not able to obtain any fingerprint  
15 evidence, correct?

16 A. Correct.

17 Q. Do you have your Presentence Report in front of you?

18 A. Yes.

19 Q. I believe that you scored Mr. Scott with additional  
20 levels for an offense occurring within two years after release  
21 as well as for while on probation?

22 A. Correct.

23 Q. Do you have the records for the offense for which you  
24 say he was on probation at the time of the current offense?

25 A. Not with me right now.

1 Q. Isn't that an offense where he received 30 days  
2 suspended?

3 A. I'd have to look.

4 Q. You can look through your report at the earlier  
5 conviction.

6 A. That is what the report says at Paragraph 48.

7 Q. Do you recall where you got the information that he  
8 had one-year probation on a 30-day suspended sentence case?

9 A. It was indicated on the Judgment for that conviction.

10 MR. MULLIN: That's all the questions I have for this  
11 witness related to the issue of the prior convictions.

12 THE COURT: Ms. Zaehringer, anything else?

13 MS. ZAEHRINGER: Your Honor, as to Paragraph 48, it is  
14 my understanding that doesn't have any bearing on the  
15 defendant's sentence if the Court finds the defendant has two  
16 prior drug felonies; however, I can submit evidence as to that  
17 if the Court is wanting to hear that evidence or I'd just  
18 reserve that based on the Judge's -- on your determination  
19 whether he's --

20 THE COURT: We are just resolving the one issue right  
21 now at this time.

22 MS. ZAEHRINGER: I have a few more questions.

23 FURTHER EXAMINATION

24 BY MS. ZAEHRINGER:

25 Q. As to Government's Exhibit 10, tell me how you



1 obtained that document.

2 A. I called the Chicago Police Department and I was able  
3 to get ahold of their Records Department and I was able to get  
4 ahold of Jesse McMullen himself and talk to him about the  
5 fingerprint records that I needed.

6 Q. Did you have conversations with him about the  
7 different names on the fingerprint cards?

8 A. Yes.

9 Q. What else did you talk about?

10 A. I indicated that he had numerous aliases and that  
11 these were the dates of arrests that I was looking for.

12 Q. And upon your request did he indicate he would try to  
13 help you out and send you the different fingerprint cards that  
14 he had?

15 A. Yes.

16 MS. ZAEHRINGER: I have no further questions.

17 MR. MULLIN: Judge?

18 FURTHER EXAMINATION

19 BY MR. MULLIN:

20 Q. So you were the one who told Jesse McMullen about what  
21 you thought were Mr. Scott's aliases?

22 A. Yes, I told him that I had three different arrest  
23 dates that I needed to verify fingerprint analysis for.

24 Q. And did you provide the aliases to Mr. McMullen?

25 A. Originally he asked for the defendant's name and I

1 told him he had numerous aliases that he was arrested under  
2 therefore I just needed these dates of arrests for these docket  
3 numbers.

4 Q. Again, so you provided him with the alias names?

5 A. I do not recall.

6 MR. MULLIN: Thank you.

7 FURTHER EXAMINATION

8 BY MS. ZAEHRINGER:

9 Q. Just one follow-up. When he was looking up the print  
10 cards to submit to you, did he reference an IR number when you  
11 were speaking with him?

12 A. Yes.

13 Q. And what did he tell you regarding the IR number?

14 A. He provided me the IR number which is listed in  
15 Exhibit 10, that's right there.

16 Q. And what is the IR number?

17 A. I am not for sure.

18 MS. ZAEHRINGER: I have no further questions.

19 MR. MULLIN: Nothing, Judge.

20 THE COURT: Thank you. Call your next witness.

21 MS. ZAEHRINGER: The government calls Mary DeVine.

22 MARY DeVINE,

23 witness herein, called as a witness by the government, after  
24 having been first duly sworn, was examined and testified as  
25 follows:

EXAMINATION

BY MS. ZAEHRINGER:

Q. State your name for the record and spell your last name.

A. Mary DeVine, D-e cap v-i-n-e.

Q. Where are you employed?

A. Rock Island City Police Department.

Q. How long have you been employed there?

A. Almost 24 years.

Q. And what is your official title?

A. I am a criminalist.

Q. And what does a criminalist do?

A. It actually involves forensic science with respect to law enforcement. There are three specific duties that I am responsible for. I am a crime scene investigator, latent fingerprint examiner, and I also analyze cannabis.

Q. And how long have you been doing that?

A. 22 and a half years.

Q. What type of training do you have to do this activity?

A. I've gone to schools presented by the FBI, schools presented by the State of Illinois, and I also attend yearly conferences presented by forensic science organizations. I belong to forensic science organizations and a national association for identification as well as the Illinois Division of the IAI. In addition I've sat on the board of the Illinois

1 division for a number of years. I have been its past president,  
2 I've also been on its board of directors or executive board, I  
3 have also been the editor of the newsletter and I've been on the  
4 training committee for years.

5 Q. And you were contacted by the probation department in  
6 this case, is that correct?

7 A. Yes.

8 Q. And what documents did she give you in order to do a  
9 comparison?

10 A. There were three copies of inked impressions.

11 Q. Showing you what's been marked as Government's  
12 Exhibits 5, 6, and 7, do you recognize those?

13 A. Yes.

14 Q. And what do you recognize those to be?

15 A. They are inked impressions.

16 Q. Are those the inked impressions that the probation  
17 department asked you to review?

18 A. They're copies.

19 Q. Okay. And how do you know that those are the ones  
20 that you reviewed?

21 A. My initials, my police number, and the date on which I  
22 did the comparisons on the inked impressions.

23 Q. Upon doing the analysis, did you do a report?

24 A. Yes.

25 Q. Showing you Government's Exhibit 8 --

1 A. Yes.

2 Q. -- do you recognize that?

3 A. Yes.

4 Q. What do you recognize that to be?

5 A. This is a report I generated after my completion of  
6 the examination.

7 Q. And Government's Exhibit 9, do you recognize that?

8 A. Yes.

9 Q. What do you recognize that to be?

10 A. This is my resume as well as my list of training.

11 MS. ZAEHRINGER: Move to admit Government's Exhibits 8  
12 and 9.

13 MR. MULLIN: Judge, same objection. This witness is  
14 being asked to use documents that -- for which there was  
15 insufficient foundation laid and therefore her opinion is based  
16 on that and we just wish to renew our objection.

17 THE COURT: Eight and nine are received. Overruled.  
18 BY MS. ZAEHRINGER:

19 Q. Can you tell us what you did once you received these  
20 ink cards?

21 A. I compared each ink card to each other to determine  
22 whether or not the impressions were made by one in the same  
23 person.

24 Q. Can you briefly describe how that is done?

25 A. Actually in this particular case it is not that

1 complex. It is what I do when I make a comparison, you simply  
2 look for the ridge detail within each finger and in this case  
3 all the fingers were different, but generally you pick out one  
4 in each one so I chose the number two finger and in looking for  
5 the detail to make sure or to see that the detail is the same in  
6 each finger, and I am looking specifically for points of  
7 interest like bifucations and ridges and dots to make sure that  
8 they have the same relationship and positioning within each  
9 finger.

10 Q. Is there a reason why you picked finger number two  
11 versus the other -- any of the other fingers?

12 A. It appeared to be the most cleanest print of the ten  
13 with each one.

14 Q. And in comparing the Government's Exhibits 5, 6 and 7,  
15 did you form an opinion after reviewing those?

16 A. Yes.

17 Q. And what is your opinion?

18 A. They were all made by the same person.

19 MS. ZAEHRINGER: I have no further questions.

20 EXAMINATION

21 BY MR. MULLIN:

22 Q. Ma'am, the card that you received from Chicago, did it  
23 have a defendant's name on it?

24 A. I'd have to look at the card again, sir. I am not  
25 sure which one you are referring to.

1 Q. Exhibit 5, do you have it in front of you?

2 A. No, sir.

3 Q. DO you see that, ma'am?

4 A. Yes, sir.

5 Q. Is there a name on that card?

6 A. Angelo Payne.

7 Q. Do you have Exhibit 7 in front of you?

8 A. I have no exhibits in front of me, sir.

9 Q. Looking at Exhibit 7, do you see that?

10 A. Yes, sir.

11 Q. So you compared Exhibit 5 which you were told came  
12 from Chicago for an Angelo Payne, the right index finger, to an  
13 index card and right index finger for something that was taken  
14 here in Davenport?

15 A. Again, I was asked to compare Exhibit Number 7 with  
16 Exhibit Number 5. The rest of it is almost immaterial to me. I  
17 took a look and examined it and they are one in the same  
18 person's.

19 Q. Do I understand your testimony that in Exhibit 5 that  
20 that fingerprint you believe is identical to the index  
21 fingerprint in Exhibit 7?

22 A. Again, it is made by one in the same person. I am not  
23 saying that they're carbon copies, it's made by one in the same  
24 persons. Sometimes when an impression is rolled, depending on  
25 how it is rolled, in this case with Exhibit Number 7 it looks

1 like it has been exaggerated out whereas with Exhibit Number 5  
2 it looks more flat down and slightly rolled, but it is one in  
3 the same person's.

4 Q. And thank you. Your opinion that it is one in the  
5 same person, I take it is based because they look alike?

6 A. Absolutely not.

7 Q. Because you would agree that in Exhibit 5 the circle  
8 or the curls go sort of up and down, it's an oval that is  
9 lengthwise north and south whereas in Exhibit 7, it appears to  
10 be flattened off to the left oval. Do you see that?

11 A. The way the impressions were left on the ink cards are  
12 slightly different; however, that does not subtract the fact  
13 that they are indeed still made by one in the same persons.  
14 They both display the same relationship and amount of  
15 positioning where the points are located within the impression.  
16 They're just one in the same person's.

17 Q. And you weren't present for -- you didn't take any of  
18 these exemplars yourself, did you?

19 A. That's correct.

20 Q. And so if each was taken with the finger in the same  
21 position, they would have ovals that would be in the same  
22 orientation, would they not?

23 A. Again, it just depends on how the impression was left  
24 to begin with.

25 Q. My question is if the impression was of a fingerprint



1 in the same orientation, then the ovals would be in the same  
2 orientation as well, correct?

3 A. If you are simply -- making sure I understand your  
4 question, if you simply took the finger and you pressed it down  
5 and then you took the finger again and pressed it down, they  
6 would definitely look similar to each other, yes.

7 Q. More similar than Exhibits 5 and 7?

8 A. Yes.

9 MR. MULLIN: That is all I have. Thank you.

10 THE COURT: Ms. Zaehringer?

11 MS. ZAEHRINGER: No questions.

12 THE COURT: Thank you, ma'am.

13 THE WITNESS: Thank you, sir.

14 MS. ZAEHRINGER: Government calls Karl Hein.

15 THE COURT: Please come forward, sir.

16 KARL HEIN,

17 witness herein, called as a witness by the government, after  
18 having been first duly sworn, was examined and testified as  
19 follows:

20 EXAMINATION

21 BY MS. ZAEHRINGER:

22 Q. State your name for the reporter and spell your last  
23 name.

24 A. Karl Hein, H-e-i-n.

25 Q. Where are you employed?

1 A. United States Marshals Service.

2 Q. How long have you been employed there?

3 A. Four years, eight months.

4 Q. Did you talk with Angelo Scott when he was booked in  
5 on June 20, 2008?

6 A. Yes, I did.

7 Q. When he was booked in did you take fingerprints from  
8 Mr. Scott?

9 A. Yes, I did.

10 Q. Showing you what's been marked as Government's Exhibit  
11 4, do you recognize that?

12 A. Yes.

13 Q. What do you recognize that to be?

14 A. It is photos of Mr. Scott as well as his fingerprints.

15 Q. And attached, the other documents attached to  
16 Government's Exhibit 4, what is contained in there?

17 A. General booking information from questions that I  
18 asked of Mr. Scott to include race, age, Social Security number,  
19 general information, as well as any prior history that he may  
20 have. Once the fingerprints were submitted in the JABS, Joint  
21 Automated Booking Station System, I received a rap sheet back  
22 from the FBI which assists in identifying who we are dealing  
23 with such as any prior criminal history from law enforcement in  
24 the past, any aliases that may have been used when given to  
25 those law enforcement agencies.

1 Q. So looking at the criminal history portion of Exhibit  
2 4, how do you obtain that? You obtain that merely from the  
3 fingerprints themselves?

4 A. Once they're -- they are submitted in the JABS system  
5 and it is a short period of time that we receive back into the  
6 computer system a document which we print out from the system  
7 here and we include that with each individual's file.

8 Q. And Government's Exhibit 7, do you recognize that?

9 A. Yes, that's the photographs as well as fingerprints  
10 for Mr. Scott.

11 Q. And is that identical to the top page of Government's  
12 Exhibit 4?

13 A. Yes.

14 MS. ZAEHRINGER: Move to admit Government's Exhibit 4.

15 MR. MULLIN: No objection.

16 THE COURT: Received.

17 BY MS. ZAEHRINGER:

18 Q. Do you see the individual whom you printed on June 20,  
19 2008, in the courtroom?

20 A. Yes.

21 Q. Can you tell me where he is seated and what he is  
22 wearing?

23 A. Yes, Mr. Scott is seated at defense counsel table  
24 wearing a two-tone gray jumpsuit with a white long underwear  
25 shirt underneath, I would say medium length dread locks.

1 MS. ZAEHRINGER: Let the record reflect he's  
2 identified the defendant. I have no further questions.

3 THE COURT: Mr. Mullin?

4 EXAMINATION

5 BY MR. MULLIN:

6 Q. Looking at Exhibit 4, does it -- does the FBI indicate  
7 that Mr. Angelo Scott uses the alias Brandon McIntyre?

8 A. I don't have that exhibit in front of me, sir.

9 Q. I'm sorry. Not a memory test. I will hand you  
10 Exhibit 4.

11 A. The question again, the name used --

12 Q. You said it contains aliases, known aliases.

13 A. Yes.

14 Q. So starting on page two of nine of the Joint Automated  
15 Booking System Limited Official Use Document, the page starting  
16 with number three, name used, that was given to the Chicago  
17 Police Department last name Payne, P-a-y-n-e, first name  
18 Antonio, middle name Lavell. Right underneath that, underneath  
19 number four is Brandon McIntyre.

20 A. Yes, sir.

21 Q. And that is the information that the FBI gets from  
22 court records such as Cook County court records?

23 A. Yes.

24 Q. That is where -- the FBI doesn't independently go out  
25 and get it, it is submitted information from court records?

1           A.    I would assume.

2           Q.    And when you -- you personally did the fingerprints of  
3 Mr. Scott here today?

4           A.    Yes, sir.

5           Q.    Was he cooperative or noncooperative?

6           A.    Cooperative.

7           Q.    I mean, he wasn't fighting with you when you were  
8 taking his exemplars?

9           A.    No, sir.

10          Q.    You were able to manipulate his finger as you wished  
11 in making the impressions?

12          A.    You could say that. I don't manipulate. We're  
13 trained at the Federal Law Enforcement Training Academy to use  
14 the basic common methods of rolling fingerprints on the  
15 fingerprint pad.

16          Q.    I didn't mean anything devious by the manipulation.  
17 Let me use a different word. You were able to handle his  
18 fingers and put them where you wanted them on the fingerprint  
19 cards?

20          A.    On the fingerprint pad.

21          Q.    Fingerprint pad. Thank you.

22          A.    Yes, sir.

23               MR. MULLIN: That is all I have. Thank you.

24               MS. ZAEHRINGER: Nothing further.

25               THE COURT: Thank you.

1 MS. ZAEHRINGER: I have no no other witnesses.

2 THE COURT: Mr. Mullin?

3 MR. MULLIN: Just argument.

4 THE COURT: Let's hear the government's argument  
5 first. They've got the burden of proof. Walk me through this,  
6 how you contend that this shows that he's been convicted of two  
7 prior drug felonies.

8 MS. ZAEHRINGER: Looking at Exhibit 1, and that  
9 corresponds with the Presentence Report Paragraph 41, in that  
10 report or in that packet it indicates that on 4-24 of '98 the  
11 defendant was found guilty and sentenced to probation for 30  
12 months and on the third page of that document it indicates that  
13 that sentence was to run concurrent with 97-CR-1376001 which  
14 corresponds to Presentence Report Paragraph No. 42.

15 THE COURT: On the third page? I am sorry. I don't  
16 see it.

17 MS. ZAEHRINGER: Third page, the first entry, 4-24 of  
18 '98 sentence to run concurrent.

19 THE COURT: I see it.

20 MS. ZAEHRINGER: You will then see that he had a  
21 violation of probation on 3-20-99, he was sentenced to three  
22 years.

23 THE COURT: Wait. I want to get there.

24 MS. ZAEHRINGER: On page four.

25 THE COURT: Yes.

1 MS. ZAEHRINGER: And on page five the first --

2 THE COURT: Not 3-20, 3-02?

3 MS. ZAEHRINGER: Yes, 3-02, I am sorry. On page five,  
4 the top entry, that sentence is to run concurrent with again  
5 Paragraph 42 and then 98-CR-11368 which is Paragraph 43.

6 Looking further in the document, the Order Sentence of  
7 Probation indicates two case numbers at the very top, again  
8 corresponding with this case number and the case number in 42.

9 THE COURT: What are the case numbers you are  
10 referring to?

11 MS. ZAEHRINGER: 97-CR-22682 and 97-CR-13760.

12 THE COURT: I see it. Thank you.

13 MS. ZAEHRINGER: Also on that Order I would like to  
14 point out at the bottom of the page where the defendant signed  
15 his name, prints his name, on this occasion it is Angelo Payne,  
16 he also writes an address of 1533 South Miller and a phone  
17 number of 542-5898 which you will see later on in the documents.

18 Turning two pages back in the Order of Sentence and  
19 Commitment to the Illinois Department of Corrections, again in  
20 that written paragraph in the middle of the document it  
21 indicates that this case is concurrent with 97-CR-13760 and  
22 98-CR-11368 which again are Paragraphs 42 and 43 and then  
23 attached to it is a picture with the date of arrest and just  
24 identifying information on Angelo Payne.

25 Government's Exhibit 2 corresponds with Paragraph 42

1 and this is in the name of Antonio Payne. On the second page it  
2 indicates on 4-24 of '98 the defendant was sentenced to  
3 probation and that sentence was to run concurrent with  
4 97-CR-22682 which is Paragraph 41. He had a violation of  
5 probation and on 3-2 of '99 he was sentenced on that violation  
6 and it was to run concurrent with Paragraphs 41 and 43 and  
7 that's on page four of the document.

8 Looking back further for the Order of Sentence and  
9 Probation, again there's two case numbers at the top, we have  
10 the defendant signing the document at the bottom, Antonio Payne,  
11 and it lists the same number as he listed on the previous case  
12 Order. Turning back two pages back to DOC, it indicates that  
13 this case was run concurrent with Paragraphs 41 and 43.

14 Government's Exhibit 3 in the name of Brandon McIntyre  
15 shows that the defendant was sentenced on 6-22 of '98, that's on  
16 the second page, and it was to run concurrent with Paragraphs 41  
17 and 42. He had a violation of probation, he was then sentenced  
18 again, and those -- that sentence was to run concurrent against  
19 Paragraphs 41 and 42 as noted at the bottom of page three.

20 Looking at the Order for Sentence of Probation, at the  
21 top of the page where it has the defendant's name, it is -- he  
22 has written in Brandon McIntyre, and it says a/k/a Angelo Payne.  
23 At the bottom of the document it is again signed by Angelo  
24 Payne, same address, as listed in Government's Exhibit 1.

25 Turning back two pages, the Order for Commitment to



1 DOC, it indicates in the written paragraph that this case is to  
2 run concurrent with Paragraphs 41 and 42. The back two pages of  
3 this exhibit show the defendant's picture along with the  
4 information as far as his identifiers and his arrest. As on  
5 Government's Exhibit 2, that corresponds with the conviction  
6 in 41 --

7 THE COURT: 42.

8 MS. ZAEHRINGER: 41.

9 THE COURT: Government's Exhibit 2?

10 MS. ZAEHRINGER: I'm sorry, Government's Exhibit 5,  
11 yes, corresponds with Government's Exhibit 1 which is Paragraph  
12 41.

13 THE COURT: Yes. Thank you.

14 MS. ZAEHRINGER: And that was identified by the  
15 criminalist and then we contend that the fingerprints in  
16 Government's Exhibit 7 and Government's Exhibit 4, 7, which was  
17 examined again by Mary DeVine, are prints taken from the  
18 defendant sitting before you which matches those prints which  
19 were given during the arrest for the conviction in Paragraph 41.

20 THE COURT: Excuse me. I thought you said that  
21 Exhibit 6 related to the arrest for the convictions in 42 and  
22 43.

23 MS. ZAEHRINGER: Government's Exhibit 6?

24 THE COURT: Yes.

25 MS. ZAEHRINGER: Government's Exhibit 6 is a

1 fingerprint card that probation got that references an arrest on  
2 a marijuana charge, but he was also -- he was arrested on the  
3 marijuana charge, but he also had the outstanding warrant for  
4 the convictions in 41 and 42.

5 THE COURT: I understand. Wait. 41 and 42 or 42 and  
6 43? I think it is 42 and 43 because it shows on 43 a -- a  
7 probation thing filed and a warrant being issued on August 27,  
8 '98, and then in January he comes into custody right after the  
9 fingerprints are taken.

10 MS. ZAEHRINGER: I didn't write down the testimony  
11 when Katie testified to it, but certainly I can ask her for  
12 clarification.

13 THE COURT: Thank you. Do you have anything else?

14 MS. ZAEHRINGER: No, Your Honor.

15 THE COURT: Mr. Mullin?

16 MR. MULLIN: Yes, Judge. You start from the -- start  
17 from the fact that this is one of those rare sentencing factual  
18 questions that Your Honor is directed by law to resolve with a  
19 higher -- well, the highest burden of proof, beyond reasonable  
20 doubt. I cite that section of the statute, I believe it is 851,  
21 subparagraph C, that factual determinations are to be decided  
22 beyond a reasonable doubt and the government has the burdens of  
23 proof.

24 You can try to connect the dots from all these things,  
25 Judge, you can look at different points on a fingerprint

1 analogy, and I don't mean to be glib about it, Judge, but it is  
2 possible that my pupil distance and my distance from my chin  
3 would match up with Brad Pitt, but the Court would never be  
4 confused by the two and does the Court have before it Exhibits 5  
5 and 7?

6 THE COURT: Yes.

7 MR. MULLIN: I would ask Your Honor just to take a  
8 look at the right index fingerprint, the one that is initialed,  
9 for Exhibit 5 and Exhibit 7 and you had an expert witness come  
10 in and say they're the same one, she seemed to resist my  
11 suggestion that the ovals are in different orientation, I ask  
12 Your Honor to take a look at those and consider whether those  
13 strike you as a layperson as the same fingerprints.

14 The orientation of the oval seems to be at 90 degrees  
15 to one another and that's why I asked the agent, did Mr. Scott  
16 in Exhibit 7 was he fighting, offers the fingerprint put down  
17 sideways because he was resisting? No, he was able to put the  
18 finger down on the pad and produced an oval that is different  
19 from Exhibit 5 to Exhibit 7. They cannot be the same person.

20 THE COURT: Come up here, bring Ms. Zaehring, and  
21 show me on here why they can't be the same person.

22 MR. MULLIN: Why they cannot?

23 THE COURT: Yeah. Be loud enough for the court  
24 reporter.

25 MR. MULLIN: Sure. I am looking upside down, but

1 Exhibit 5, the oval appears to be almost straight up and down,  
2 maybe just at eleven o'clock. The oval in this one, Judge, in  
3 Exhibit 7, is turned almost 90 degrees to that in Exhibit 5.

4 THE COURT: I didn't even know which ones you were  
5 referring to.

6 MR. MULLIN: Looking at Exhibit 1, Judge, the second  
7 to last page of Exhibit 1, do you see the --

8 THE COURT: Just wait a minute.

9 MR. MULLIN: Sure. All right.

10 THE COURT: Go ahead.

11 MR. MULLIN: Exhibit 1, second to last page, is a  
12 photograph of an individual identified as an -- must be a typo,  
13 Angleo, A-n-g-l-e-o, with a birthday of 1978. That's the  
14 paragraph that they say is Mr. Angelo Scott. I mean, the  
15 individuals do not look -- I'm leaving it to Your Honor in  
16 looking at that whether the picture depicted there is the  
17 defendant 10 years later that is in this court.

18 The significance of the -- again, Your Honor overruled  
19 our objection to use hearsay evidence, but Your Honor doesn't  
20 have to treat hearsay evidence the same as it does non-hearsay  
21 evidence. Even if you admit it, you give it the weight that  
22 Your Honor believes it deserves. They thought it was important  
23 enough to obtain fingerprint evidence and information in 41.  
24 When they say they have fingerprint evidence for the conviction  
25 in Paragraph 41, it is a euphemistic way of saying we've got

1 evidence for the conviction in paragraph 43. We don't even have  
2 fingerprint evidence.

3           We've heard no testimony today from law enforcement  
4 officers that identifies this person as the individual in  
5 Paragraph 43 of the Presentence Report. Not a prosecutor, not a  
6 defense counsel, not a Department of Corrections person, not an  
7 Affidavit from any of these people. It is just well, in a court  
8 record there's a handwritten thing which is then tracked in  
9 Exhibits 1, 2, and 3, picked up by the clerical staff, that it  
10 is these case numbers.

11           One transposition of a letter in there, in, Judge, and  
12 it is a Brandon McIntyre who is not Angelo Scott and so for the  
13 evidence here, again, the decision is not whether he gets an  
14 enhancements of an extra 24 months. It is the difference  
15 between life, never getting out of prison, and not getting free  
16 today, but having a shorter sentence, a mandatory minimum of 10  
17 years, 20 mandatory if Your Honor believes one of these  
18 convictions is Mr. Scott for which they at least have  
19 fingerprint evidence then it would be a 20 years mandatory under  
20 the statute.

21           For all of those reasons, Judge, we think the  
22 government has failed in its proof beyond a reasonable doubt  
23 establishing that both Paragraphs 41 and 43 of the Presentence  
24 Report are convictions of this defendant. Thank you.

25           THE COURT: In that you have invited me to second

1 guess the fingerprint examiner and to examine the prints for  
2 myself, open up -- just stop. Wait. Answer my question first.  
3 You, please, open up Exhibits 1, 2, and 3 to the place where the  
4 defendant in those three cases signed the Order and the Sentence  
5 of Probation and tell me that the same person didn't sign those  
6 three.

7 MR. MULLIN: Judge, I -- I object to the  
8 characterization that I was inviting you. This is just an  
9 expert and Your Honor can accept or reject their testimony like  
10 any other -- any other witness. I don't think that a  
11 fingerprint expert comes in with some presumption of  
12 infallibility that the Court can't disregard that so I don't  
13 want a ruling based on the fact that one person looking at two  
14 prints which do not look to some of us as the same fingerprint,  
15 she says it's the same fingerprint, Your Honor can either accept  
16 or reject her evidence, but I will look at the --

17 THE COURT: I am fully aware of that. I don't have to  
18 believe anything that is said in court.

19 MR. MULLIN: Again, I've looked through these, Judge,  
20 I am not sure I am going to be put on the witness stand whether  
21 or not they are the same or not, but they are the same printed  
22 name, Angelo Payne, and the same phone number. We don't know in  
23 how many other cases in the clerk's records in Cook County have  
24 that same alias. We don't know, Judge.

25 THE COURT: Handwriting doesn't look vaguely familiar

1 to you?

2 MR. MULLIN: I will double check it, Judge. One is  
3 Antonio Payne and one is Angelo Payne. Looking at Exhibits 1  
4 and 2, Your Honor, they're different first names and the P's  
5 look different in Exhibit 1, the P is just like a printed P, it  
6 has a little serif in Exhibit 2, and in the -- if in the few  
7 seconds that I have been asked to look at those, those are two  
8 differences that I am able to find.

9 THE COURT: Thank you. Do you have any other argument  
10 you would like to make?

11 MR. MULLIN: One moment, Your Honor.

12 (An off-the-record discussion was held.)

13 MR. MULLIN: We would point out that in Exhibit 3, I  
14 don't think there is -- that's Angelo Payne, but I believe  
15 that's a -- well, I have no -- I have no opinion on Exhibit 3  
16 about the similarities of the signatures, but they do purport to  
17 be in the same name, Angelo Payne, on both of those. Judge,  
18 that's all the argument that I have.

19 THE COURT: Thank you. There is no question in my  
20 mind. This is the same individual convicted of the offenses in  
21 Paragraphs 41, 42, and 43 of the Presentence Report and it is  
22 the same Angelo Scott before the Court today. I make that  
23 finding beyond a reasonable doubt. There is absolutely no doubt  
24 in my mind that it is the same individual. There are just way  
25 too many indications in here from the fingerprints to the

1 handwriting to the fact of the concurrent sentences to the fact  
2 of the defendant's signing for concurrent sentences to the  
3 identification numbers to the similarity in the addresses, the  
4 telephone number, the repeated similarities, although not  
5 identical in the date of birth information, there's no question  
6 in my mind, these are the same individual and the defendant,  
7 Angelo Scott.

8 I find that Mr. Scott has been convicted of two prior  
9 drug felony drug offenses as that term is stated in 21, United  
10 States Code, Section 841(b)(1)(A).

11 I think the other sentencing issues are now moot. I  
12 think you have argued what you would like to make on the  
13 applicability of those offenses though first, whether they  
14 qualify under 841(b)(1)(A) because you contend they are juvenile  
15 offenses?

16 MR. MULLIN: Yes, Judge. We have several arguments  
17 that we have advanced in our Sentencing Memorandum. The -- I  
18 don't believe and I could have overlooked it, Judge, I did look  
19 fairly carefully, I didn't find anything in the Eighth Circuit  
20 directly on point that says that you can use a juvenile offense.

21 THE COURT: These aren't juvenile offenses though.  
22 They were in adult court, committed before he was 18 years old.

23 MR. MULLIN: I apologize. Your Honor is absolutely  
24 correct. These offenses were as far as I can tell in my look at  
25 it they are juvenile court offenses, they are adult convictions,



1 but nevertheless they were -- the conduct complained of was done  
2 while he was 16 and 17 years of age and in the Supreme Court  
3 case that I looked at on use of juvenile conduct and punishing  
4 people like they were adults, the closest thing I could find was  
5 a death penalty case where they said involving standard of  
6 morality, he just can't, they can't use what a juvenile did to  
7 give them the ultimate sentence.

8           My analogy is that this is the functional equivalent  
9 of a death sentence in certain respects. Whether it is a death  
10 sentence or life imprisonment, Mr. Scott risks never leaving a  
11 federal facility other than in a pine box and it is the harshest  
12 penalty that we have next to a death sentence, same reasons that  
13 applied I believe in that Supreme Court case ought to apply in  
14 this situation that we just don't hold adults to the same  
15 punishments that we do juveniles, whether it is in a juvenile  
16 court case or whether it is in an adult case as a juvenile, it  
17 is still conduct done by people who can't vote, who can't --  
18 aren't trusted by society to possess alcohol or vote and  
19 therefore we just treat juveniles and juvenile records it seems  
20 differently and for those reasons -- and I also cite Eighth  
21 Amendment concerns about using on their records those offenses  
22 to give him a life sentence, that that would constitute a  
23 deviation of involving standards of morality by society and  
24 therefore runs afoul of the Eighth Circuit ban on cruel and  
25 unusual punishment. Thank you.

1 THE COURT: Eighth Amendment. Yeah. Ms. Zaehring?

2 MS. ZAEHRINGER: Your Honor, it is clear that we can't  
3 use juvenile adjudications to enhance sentences, but it is clear  
4 that we can use adult records and based on the record submitted  
5 before this Court these records of this defendant are adult  
6 convictions and therefore should be used.

7 THE COURT: They are adult convictions committed by  
8 the defendant before he was 18 years old. It is certainly harsh  
9 to sentence someone to life imprisonment for two prior  
10 possession charges and a conspiracy such as he was convicted for  
11 in this case. Congress in adopting or enacting 841(b)(1)(A)  
12 could have said felony drug trafficking crime, it didn't, it  
13 said felony drug crime. These certainly qualify under Illinois  
14 law as felony drug crimes.

15 As applied to this defendant, he has the conviction  
16 for possession of a controlled substance in '97, the receipt,  
17 possession, or selling of a stolen vehicle in '98, the  
18 possession of a controlled substance felony in '98, armed  
19 robbery, armed with firearm in 2003, domestic battery in 2004,  
20 assault in 2005, assault in 2007 for which there's a failure to  
21 appear and a warrant remains outstanding, another possession of  
22 a controlled substance in 2007, another possession of a  
23 controlled substance in 2007, so it wasn't -- these offenses  
24 didn't happen in a vacuum. Still, the plain language of the  
25 statute requires that the Court impose a sentence. It is harsh,

1 but does not run afoul of the Eighth Amendment prohibition on  
2 cruel and unusual punishment.

3 I would hear from you, Mr. Mullin, then from Mr. Scott  
4 then from Ms. Zaehring before imposing sentence.

5 MR. MULLIN: Is it Your Honor's intention not to go  
6 over the drug quantities in order to get a reversal on the life  
7 sentence? We'd have to have a resentencing then and take up the  
8 issue of where he would object the Guideline but for the life  
9 sentence and our issue of downward variance or is it Your  
10 Honor's intention not to make those findings?

11 THE COURT: I think those issues are moot at this  
12 point.

13 MR. MULLIN: Judge, you have heard my arguments pretty  
14 much on the mandatory life. Mr. Scott also wanted me to bring  
15 up the Armstrong selective prosecution issue, he was most  
16 emphatic that I include that in my sentencing memo so I did  
17 under other issues that he was asking the Court to reconsider.  
18 In light of Armstrong, his prior selective prosecution  
19 argument --

20 THE COURT: I read Armstrong last night and again if  
21 you go back to the defendant's Motion filed in this matter, I  
22 don't believe there was a brief with it, but if you go back to  
23 the Motion, it was insufficient as a matter of law pursuant to  
24 Armstrong that selective prosecution be demonstrated to the --  
25 based on an impermissible motive such as race and the defendant

1 failed to make an adequate showing of that in order to obtain a  
2 hearing.

3 MR. MULLIN: I hear Your Honor's ruling on that. As  
4 part of that he wanted me to point out to the Court that he was  
5 the only individual who was caught in connection with this  
6 particular arrest, Nan Sturdy, Shekida Thompson, he was the only  
7 one from Chicago, he was the only one that was facing  
8 prosecution in Federal Court, and for that reason that he felt  
9 he was being selectively prosecuted.

10 THE COURT: It was based on geography?

11 MR. MULLIN: They didn't do it to the Iowa folks, they  
12 didn't do it to Nan Sturdy.

13 THE COURT: Where is Nan Sturdy from? I don't even  
14 remember.

15 MR. MULLIN: Iowa City.

16 THE COURT: So it is based on geography? Yes or no.  
17 I don't know.

18 MR. MULLIN: Yes, Judge.

19 THE DEFENDANT: No, it is also based on race, that he  
20 didn't want to bring that claim forth.

21 THE COURT: You will get your chance in just a minute.

22 MR. MULLIN: We didn't make race at pretrial and that  
23 was with -- we thought with the understanding that we thought  
24 that would be the way we would go and he now wants the issue to  
25 mention of race, but certainly he was the only one who wasn't

1 local who was prosecuted federally.

2 Judge, Your Honor's rulings are that these offenses  
3 qualify, that he took the life offenses, the life imprisonment,  
4 I don't know much else that can be argued on his behalf if Your  
5 Honor is intending to grant -- to order the life sentence in  
6 this case. Life would strike me as contrary to 3553(a), it  
7 seems to be more than -- more than necessary, greater than  
8 necessary to comply with the purposes of 3553(a) in his  
9 particular circumstances. We ask the Court not to impose the  
10 life sentence. Thank you.

11 THE COURT: Mr. Scott, is there something you wish to  
12 say in your own behalf before sentence is imposed?

13 THE DEFENDANT: Yes, I do. To cover the grounds of  
14 the selective prosecution, I noticed that throughout the Motion  
15 and the previous trial Motions that your Order stated that it  
16 was defendant that didn't or fail to prove whatever the claim  
17 should be. It was defendant's counsel who failed that. I have  
18 no way to the research of computers, of case laws, only by  
19 through the means of the jails which permits me, allowed me to  
20 do research to the law.

21 I have explained to you prior to -- prior to my trial  
22 at the pretrial hearings for the other Motions that were filed  
23 on my behalf from my counsel that I had no -- no whatsoever hand  
24 in on those Motions. That's why I asked you to go pro se. All  
25 right.

1 I just filed a Motion for the retest of drugs. You  
2 denied and said defendant -- you have no claim as to object to  
3 -- what is it? It was the testing of the drugs and said  
4 specifically not giving no reasons why I wanted to get the drugs  
5 retested. I specifically communicated to my counsel why I  
6 wanted the drugs retested.

7 I specifically communicated to my counsel why I wanted  
8 a new trial, I continued to communicate to him and he filed with  
9 the Court. I have no say after he files. I instructed him to  
10 do as I request and what we discussed prior to bringing it forth  
11 to the Court. I have no control over that. Now I'm speaking my  
12 piece in court and every time I do so, it is -- it becomes moot  
13 for some reason.

14 As far as the prior convictions, this is the first  
15 time ever I ever seen -- I ever seen any of this paper work that  
16 has been presented as exhibits to the Court. I have never seen  
17 this paper work before trial, during trial, post trial, ever. I  
18 have never seen this paper work. The photographs I have never  
19 seen, the minimus, I never seen the paper work whatsoever.

20 THE COURT: You also refused to speak with the  
21 probation office to be interviewed, right?

22 THE DEFENDANT: That had nothing with me doing the  
23 paper work. What does that have to do with the paper work I'm  
24 telling you I never seen? I didn't refuse to speak with them, I  
25 didn't want to sign the papers for the -- they asked me to sign.

1 I never refused to speak with them. I was anxious to speak with  
2 them. It had nothing to do with these circuit court official  
3 copies that is supposed to be alleged that these are certified  
4 copies from Cook County Department of Correction, you know, the  
5 Cook County court system before you, Courts rely on exhibits on  
6 the government's behalf. That has nothing to do with it. I  
7 have never seen these before.

8 THE COURT: Is there anything else you'd like to say?

9 THE DEFENDANT: If I thought that -- as far as the  
10 one-to-one ratio, I want to know why the Judge, that you would  
11 not give the Motion any justice put forth and 100-to-one ratio  
12 or if he even missed it. I didn't even know. I don't  
13 understand the back and forth between you two when I spoke.

14 THE COURT: Anything else you want to say or ask?

15 THE DEFENDANT: Yes, about the 100-to-one ratio.

16 THE COURT: Go ahead.

17 THE DEFENDANT: I ask that the Court to rule in my  
18 favor for the one-to-one ratio as it is stated in the sentence  
19 memorandum as my understanding that the U.S. Attorney's Office  
20 received notification that no objections should be made to  
21 Motions for Downward Variances for the 100-to-one to be a  
22 disparity of the crack versus powder cocaine and to be adopted  
23 by the one-to-one ratio.

24 THE COURT: Okay. Is that it?

25 THE DEFENDANT: Yes.

1 THE COURT: Ms. Zaehring?

2 MS. ZAEHRINGER: Your Honor, we are asking for the  
3 mandatory life in this case based on the offense conduct of this  
4 case, the role of this defendant played, the defendant's  
5 continued criminal history that began at the age of 17, the  
6 facts -- another factor is the defendant has a pending serious  
7 case and the defendant has no employment history.

8 THE COURT: In preparing for sentencing, I have  
9 examined all of the factors set forth in Title 18, United States  
10 Code, Section 3553(a). I studied the nature and circumstances  
11 of this offense and independently recall the testimony at trial.  
12 I did extensively study the history and characteristics of this  
13 defendant and so I did consider the seriousness of the offense,  
14 the question of just punishment, the need for adequate  
15 deterrence to criminal conduct, the need to protect the public  
16 from further crimes from this defendant, the sentencing options  
17 that are available or the lack of sentencing options available,  
18 I considered the Sentencing Guidelines, I considered the need to  
19 avoid unwarranted sentencing disparity among defendants with  
20 similar records who have been found guilty of similar conduct.

21 I was prepared in the event that the government failed  
22 to prove that the defendant had two prior felony drug  
23 convictions to resolve the Guideline sentencing issues that had  
24 been raised by the defendant, but found them to be moot. The  
25 only factual disputes that were ultimately relevant were those



1 related to whether he had been convicted of the crimes set forth  
2 in Paragraphs 41 through 43 of the Presentence Report and that  
3 rendered the issue regarding the Guidelines moot.

4           The 100-to-one ratio that is being discussed or -- and  
5 it isn't 100-to-one ratio when you get to the high end of the  
6 Guidelines as this case would be is a Guideline sentencing  
7 issue. It is not a mandatory minimum issue and this case is  
8 driven by the mandatory minimum and that's why the Court found  
9 the issue very early with regard to the Guidelines to be moot as  
10 did the Kimbrough and Speers issues.

11           Having found that the defendant was convicted of a  
12 conspiracy to distribute in excess of 50 grams of crack cocaine  
13 and having found that he was convicted of two prior felony drug  
14 offenses, the Court has no option here.

15           It is the judgment of the Court that the defendant,  
16 Angelo Scott, is hereby sentenced to the custody of the Bureau  
17 of Prisons for the rest of his natural life on Count 1 of the  
18 Indictment. If for some reason you were released, you'd be  
19 placed on supervised release for a term of 20 years. Within 72  
20 hours of release from the Bureau of Prisons you would then be  
21 required to report in person to the probation office in the  
22 district where you were released.

23           While on supervised release you would not be able to  
24 commit another federal, state, or local crime. You would be  
25 prohibited from possessing a firearm or destructive device or

1 illegally possessing a controlled substance.

2           The Court would impose the following additional terms  
3 of supervised release: That you not patronize businesses where  
4 more than 50 percent of the revenue is derived from the sale of  
5 alcohol; that you submit to mental health evaluation and  
6 participate in any recommended treatment; that you submit to  
7 regular drug evaluation and substance abuse evaluation, testing,  
8 and treatment, and not use alcohol or other intoxicants; that  
9 you maintain full-time, legitimate employment, and not be  
10 unemployed for a term of more than 30 days unless excused by the  
11 probation office and that you submit to a search of your person,  
12 residence, adjacent structures, office, or vehicle conducted by  
13 a probation officer at a reasonable time and in a reasonable  
14 manner based on reasonable suspicion of contraband or evidence  
15 of a violation of the conditions of release. All is more fully  
16 set forth in the Judgment and Commitment Order to be entered  
17 later today or first thing tomorrow.

18           The Court finds that you do not have the ability to  
19 pay a fine. You are ordered to pay a \$100 special assessment to  
20 the Victim's Assistance Fund which is due and payable  
21 immediately without interest to the Clerk of Court for the  
22 Southern District of Iowa.

23           Do you want me to make a recommendation as to where he  
24 is incarcerated?

25           MR. MULLIN: He's requested to be placed either

1 Indiana or Atlanta.

2 THE COURT: Why? Close to family?

3 THE DEFENDANT: Yes.

4 THE COURT: The Court recommends that he be  
5 incarcerated in the state of Indiana or Georgia. You have the  
6 right to take an immediate appeal from this Judgment and  
7 Commitment Order. Any appeal has to be filed within ten days  
8 after I file the written Judgment. The written Judgment will be  
9 filed either later today or first thing tomorrow morning.

10 MR. MULLIN: I didn't mean to interrupt.

11 THE COURT: I'm done.

12 MR. MULLIN: Mr. Scott has asked the Court appoint  
13 substitute appellate counsel in this case.

14 THE COURT: I don't appoint the attorneys on appeal.  
15 Court of Appeals appoints the attorneys on appeal. Mr. Mullin,  
16 do you have anything else?

17 MR. MULLIN: No, Your Honor.

18 THE COURT: Ms. Zaehringer, do you?

19 MS. ZAEHRINGER: No, Your Honor.

20 THE COURT: We are in recess.

21 (Proceedings concluded at 3:51 p.m., June 25, 2009.)

22

23

24

25

C E R T I F I C A T E

I, the undersigned, a Certified Shorthand Reporter of the State of Iowa, do hereby certify that I was called in the capacity of a Certified Shorthand Reporter to report the foregoing proceedings in the above-captioned matter and that same was taken down by me in stenotype and later reduced to Computer-Aided Transcription under my supervision and direction, and that the foregoing Transcript of Proceedings is a true record of the testimony given and all objections interposed and rulings made thereon.

I further certify that I am neither attorney or counsel for, nor related to or employed by any of the parties to the action in which these proceedings were had, and further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto or financially interested in the action.

Dated at Davenport, Iowa, this 20th day of July, 2009.

/s/ Linda Faurote-Egbers  
Certified Shorthand Reporter  
and Notary Public  
Linda Faurote-Egbers  
Notarial Seal  
Commission Number 223944  
My Commission Expires 8-10-11